



STATE OF NEW YORK

UNEMPLOYMENT INSURANCE APPEAL BOARD

PO Box 15126

Albany NY 12212-5126

DECISION OF THE BOARD

Mailed and Filed: OCTOBER 26, 2022

IN THE MATTER OF:

Appeal Board No. 624517

PRESENT: MICHAEL T. GREASON, MEMBER

The Department of Labor issued the initial determinations disqualifying the claimant from receiving benefits, effective October 2, 2021, on the basis that the claimant lost employment through misconduct in connection with that employment and holding that the wages paid to the claimant by JOHN T MATHER MEMORIAL prior to October 2, 2021 cannot be used toward the establishment of a claim for benefits; and in the alternative, disqualifying the claimant from receiving benefits, effective October 2, 2021, on the basis that the claimant voluntarily separated from employment without good cause. The claimant requested a hearing.

The Administrative Law Judge held a telephone conference hearing at which testimony was taken. There was an appearance by the claimant. By decision filed June 23, 2022 (), the Administrative Law Judge sustained the alternate determination disqualifying the claimant from receiving benefits, effective October 2, 2021, on the basis that the claimant voluntarily separated from employment without good cause, and found it unnecessary to rule on the initial determination of misconduct.

The claimant appealed the Judge's decision to the Appeal Board.

Our review of the record reveals that the case should be remanded to hold a further hearing. We find that additional testimony and other evidence is needed to render a fully informed decision on the issues, particularly given the claimant's testimony that the employer did not explain the consequences of her failure to

receive the COVID-19 vaccination; and in light of the employer's indication that it could not appear on the date of the hearing, but did not wish to relinquish its right to participate in the proceedings.

Upon remand, the employer shall be given the opportunity to cross-examine the claimant on the testimony she provided at the June 23, 2022 hearing. Prior to the remand hearing, the employer shall make arrangements through the Hearing Section to listen to the recording of that proceeding.

In addition, the employer is directed to produce witnesses and documentary evidence to establish when and how the claimant was informed of the COVID-19 vaccination requirement prior to September 27, 2021, and what, if anything, was communicated to the claimant regarding the consequences of failure to receive the vaccination. The employer shall also produce evidence of the reason for the employer's vaccination directive.

Further, communication between the claimant and the employer with respect to the claimant's request for a religious exemption, with legible dates, shall be produced by the parties, to provide additional evidence of the amount of notice provided by the employer, and communications between the claimant and the employer.

The employer shall also produce evidence of the period of time the claimant worked remotely, the date or dates she was called to work on-site after March 2020, and the reason for this she was called in to work at the office.

Any documentary evidence produced by the parties shall be received into evidence after the appropriate confrontation and opportunity for objection.

The parties are placed on notice that failure to produce the evidence directed by the Board may result in the hearing Judge or the Board taking an adverse inference against that party, and deciding that the evidence not produced would not have supported that party's position.

The hearing Judge may receive any other evidence needed to decide the issues.

Now, based on all of the foregoing, it is

ORDERED, that the decision of the Administrative Law Judge be, and the same hereby is, rescinded; and it is further

ORDERED, that the case shall be, and the same hereby is, remanded to the Hearing Section to hold a hearing on the issues, upon due notice to all parties and their representatives; and it is further

ORDERED, that the hearing shall be conducted so that there has been an opportunity for the above action to be taken, and so that at the end of the hearing, all parties will have had a full and fair opportunity to be heard; and it is further

ORDERED, that an Administrative Law Judge shall render a new decision, on the issues, which shall be based on the entire record in this case, including the testimony and other evidence from the original and the remand hearings, and which shall contain appropriate findings of fact and conclusions of law.

MICHAEL T. GREASON, MEMBER